

IN THE HIGH COURT OF JUDICATURE OF RAJASTHAN AT
JODHPUR.

ORDER

Soor Singh & ors. Versus State of Rajasthan.

S.B. Criminal Revision No. 378/2006 against
the judgment dated 10-5-2006 passed by the
Sessions Judge, Balotra, in Criminal Appeal
No. 10/2005.

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Date of Order: May 18, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioners.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

Notice for final disposal is accepted by the learned
Public Prosecutor. With the consent of the learned counsel for
the parties, the revision petition is finally heard and decided at
the admission stage.

The petitioners were convicted by the Judicial
Magistrate, Balotra (for short, "the trial Court" hereinafter) for
the offences under Sections 325, 323 and 447 IPC vide
judgment and order dated 30-3-2005 passed in Criminal Case
No. 133/2003 and each of them were sentenced to rigorous
imprisonment for two months and a fine of Rs.1000/-,in default

of payment of fine further to undergo two months simple imprisonment for the offence under Section 325 IPC; three months' rigorous imprisonment for the offence under Section 323 IPC and one month's rigorous imprisonment for the offence under Section 447 IPC. Against the judgment and order dated 30-3-2005 passed by the trial Court convicting and sentencing the petitioners, the petitioners filed an appeal before the Sessions Judge, Balotra (for short, "the Appellate Court" hereinafter) and the Appellate Court, vide judgment and order impugned dated 10-5-2006, while maintaining the conviction of the petitioners for the offences under Sections 447, 323 and 325 IPC, reduced the sentence for the offence under Section 325 IPC to six months simple imprisonment and a fine of Rs.500/-, in default of payment of fine further to undergo one month's simple imprisonment. The sentences were ordered to run concurrently. Aggrieved by the judgments and orders impugned, the petitioners have filed the instant criminal revision.

I have heard learned counsel for the petitioners and the Public Prosecutor appearing for the State.

At the very out set, learned counsel for the petitioners submits that the petitioners do not challenge their conviction; however, they have confined the arguments only on the point of sentence. Learned counsel for the petitioners submits that both the courts below fell in error in not

considering the case of the petitioners under Section 360 Cr.P.C. or under the Probation of Offenders Act, 1958 (for short, "the Act" hereinafter). Learned counsel submits that no reasons, much less special reasons for not considering the case of the petitioners under Section 360 Cr.P.C. has been assigned either by the trial Court or by the Appellate Court, which, according to the learned counsel, is mandatory in nature in view of the provisions of Section 361 Cr.P.C.

I have carefully gone through the statements of injured witnesses, as also the statement of PW 5 Dr. Ranu Lal Khatri, who medically examined injured Roopa Ram, Nema Ram and Habta Ram. The injuries suffered by all these three injured persons are simple in nature by blunt object, except injury No.4 suffered by injured PW 1 Roopa Ram, i.e. injury on ulna which is grievous in nature. The occurrence is said to have taken place at the spur of moment in connection with some dispute with regard to a cote (Bada), to which both the parties claimed to be their own. The petitioners are in custody since 10-5-2006, i.e. almost for nine days. From the perusal of the judgments and orders of the Courts below, it nowhere appears that the petitioners are previously convicts. There is no adverse antecedents to their credit on record and the aforesaid offences appear to be their first offences.

Section 361 Cr.P.C. provides special reasons to be

recorded in certain cases and reads as under:-

"361. Special reasons to be recorded in certain cases.- Where in any case, the Court could have dealt with.-

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders;

but has not done so, it shall record in its judgment the special reason for not having done so."

Thus, from the bare reading of Section 361 Cr.P.C., it makes more than clear that it is mandatory duty cast on the Court to record in its judgment special reason for not granting the benefit of Section 360 Cr.P.C. where it could have dealt with the accused under this Section.

In Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245, the Hon'ble Supreme Court held that mandatory duty is cast on the Court to record in its judgment specific reasons for not granting benefit of Section 360 where it could have dealt with the accused under that Section.

Having regard to the peculiar facts and circumstances of the case and the fact that the occurrence took place at the spur of moment in connection with a dispute with regard to a cote (Bada) to which both the parties made their

claims, as also the fact that except injury No.4 suffered by PW 1 Roopa Ram, all the injuries suffered by the injured persons are simple in nature caused by blunt object and also the fact that the petitioners have already undergone the imprisonment for nine days and they have been facing protracted trial, appeal and revision and no reason, much less special reason, has been recorded by the Courts below for declining to release the petitioners under Section 360 Cr.P.C. or under the Probation of Offenders Act, 1958, in my view, the ends of justice would be met if the petitioners are released on probation of good conduct.

Consequently, the revision petition is partly allowed. While maintaining the conviction of the petitioners for the offences under Sections 447, 323 and 325 IPC as also the sentence of fine, instead of sentencing the petitioners at once to any imprisonment, it is directed that the petitioners be released on probation under Section 4 (i) of the Probation of Offenders Act, 1958 provided each of them furnishes a person bond in the sum of Rs.10,000/- along with one surety in the like amount each, to the satisfaction of the trial court to be of good behaviour and maintain peace and tranquility and shall not repeat the offence for a period of two years and shall appear and receive the sentence when called upon to do so during such period. Each of the petitioner shall deposit a sum of Rs. 2000/- each as compensation under Section 5 of the Probation of

Offenders Act, 1958, totaling Rs.8000/-, and on depositing the said amount of fine, a sum of Rs.6000/- be paid to injured PW 1 Roopa Ram and Rs.1000/- be paid to each of the injured PW 2 Nema Ram and PW 3 Habta Ram. The petitioners are in jail. On furnishing the bail bonds and depositing the amount of fine and compensation, they be set at liberty forthwith, if not required in any other case. The application for bail/suspension of sentence being No.97/2006 stands disposed of.

(H.R. PANWAR), J.

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